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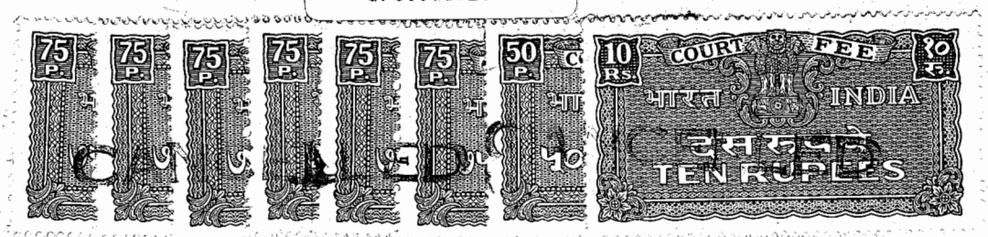

CRI/S/-

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 668 of 1999

3544

9/12/99
A.D. Mishra
Advocate
Adv. A.B.

APPELLANT : Bhondu, son of Nara, aged 35 years, residentof village Mahulai, Post: & P.S. Bhanpuri Distt.Bastar (MP).

Versus

RESPONDENT : State of M.P. through P.S. Urla, Distt.Raipur (M.P.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-78

(44)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 668/99 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 668/1999

Appellant : Bhondu

Versus

Respondent : State of Madhya Pradesh (now Chhattisgarh)

Shri Sachin Singh Rajput, Advocate for the appellant.

Shri G.D. Washwani, Addl. Public Prosecutor for the State.

ORAL JUDGMENT

(13-12-2006)

Per Dhirendra Mishra, J

Accused Bhondu has preferred this appeal under Section 374(2) of Cr.P.C. against the judgment of conviction and order of sentence dated 5-2-1999 in S.T. No. 234/98 passed by the learned 7th Additional Sessions Judge, Raipur whereby the learned Additional Sessions Judge after holding accused-appellant guilty for commission of offence punishable under Section 302 of I.P.C, sentenced him to undergo imprisonment for life and a fine of Rs. 1,000/- and in default of payment of fine, to further undergo R.I. for six months.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2. Case of the prosecution in brief is that on 10-3-1998, complainant Kamal Narayan Sahu P.W. 2 lodged a report that his younger brother Sumant alias Konda is a mentally retarded person. In the evening when he was in the lane of village, some female folk namely Gangabai, Sahotin Bai, Savitri Bai, Vimla Bai etc. came shouting and informed that a thief is assaulting Alakhram in a field near a tank whereupon he immediately proceeded towards the tank, he saw that crowed had gathered and one thief holding an axe and club in both of his hands and also stone was running after villagers and throwing stones towards them. Villagers also started pelting stones etc. in the process of catching hold of him and Bhukhan Sahu caught hold of him, however he managed to free himself. However subsequently he was caught and thereafter he was beaten by the villagers. At that time, Narsingh Kenvat asked him to see his brother Konda whether he is dead or alive, whereupon he saw Sumant alias Konda lying on his stomach and blood was oozing from his neck. On the basis of the report of the complainant, initially Dehati Aalishi of Annexure P-5 was registered and thereafter on the basis of Dehati Nalishi, F.I.R. of Ex. P-20 was registered. Inquest over the dead body	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of Konda was performed after due notice to witnesses and thereafter body of Konda was sent for autopsy to Medical College Hospital, Raipur where Dr. Sanjay Kumar Dadu (P.W. 26) conducted post mortem and submitted his report of Ex. P-29. During post mortem, he found 11 injuries over the person of the deceased. During investigation plane soil and blood stained soil were taken into possession vide Ex. P-3. One shirt vide Ex. P-6 and one axe vide Ex. P-7 were taken into possession from Kamal Narayan Sahu. Sliepers, Lungi, Shawl and terrycot shirt were taken into possession vide Ex. P-8. A club was taken into possession vide Ex. P-9 from Keju Maharaj. Spot map of Ex. P-10 was prepared. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex. P-26. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur who in turn committed the case to the Court of Sessions Judge and the same was received on transfer by Additional Sessions Judge, Raipur for trial. Charge under Section 302 of I.P.C. was framed against the accused who adjured his guilt.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3. Prosecution in order to establish the charge against the accused examined 28 witnesses, thereafter statement of accused was recorded under Section 313 of Cr.P.C. in which the appellant denied the circumstances appearing against him in prosecution case. However he stated that at the time of incident, villagers had surrounded him and were beating him and he pleaded innocence and false implication. He also examined defence witnesses Sampat Ram and Gadru Ram in his defence. Learned trial Court after hearing counsel for the respective parties, convicted the appellant and sentenced him as above.

4. We have heard learned counsel for the parties. We have perused the impugned judgment and record.

5. Learned counsel for the appellant submits that conviction of the appellant is based on statement of P.W. 10 Narsingh who is alleged eye-witness of the incident. It is further based on the statements of P.W. 21 Smt. Gangabai, P.W. 2 Kamal Narayan, P.W. 5 Alakhram, P.W. 11 Santuram Sahu and P.W. 16 Bhukhan who are witnesses of circumstances that the accused was beating Alakhram and chasing villagers at the time of incident. However, from the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence of these witnesses though presence of the appellant at the place of incident is established, however involvement of the appellant in causing death of the decease is not proved. Almost all the witnesses except P.W. 2 Kamal Narayan have resiled from their earlier statements, therefore they have been declared hostile, however in their cross-examination, prosecution has not been able to elicit any incriminating circumstance against the appellant which connects him with the offence in question. He further submits that by close scrutiny of the evidence of these witnesses it is evident that they are not reliable witnesses as they have made contradictory statements in their examination-in-chief by the prosecution and cross-examination by the defence and the Court below was not justified to rely upon the statements of these witnesses.

6. On the other hand, learned counsel for the State supporting the impugned judgment submits that presence of the accused in the place of incident is established. He was caught from the place of incident by the villagers and they beat him and handed over to the police who reached their immediately after the incident. P.W. 10 Narsingh is eye-witness who has seen the incident and who has

आदेश पत्रक (पूर्वानुबद्ध)

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stated in his cross-examination by the prosecution that the accused was the person who was present in the place of incident and the thief described by him who assaulted the deceased.

7. Homicidal death of Konda alias Sumant is not in dispute. Even otherwise looking to the statement of the P.W. 26 Dr. Sanjay Kumar Dadu who has conducted post mortem over the dead body of deceased Sumant and has found following injuries on his person of deceased and has stated that cause of death is excessive bleeding as a result of head injuries, injuries were caused by some hard, sharp and heavy object, death of deceased was homicidal in nature as the injuries present on person of the deceased were sufficient in the ordinary course of nature to cause death, homicidal death is established:-

i. Impact abrasion over masion in middle size 2.5 x 0.5 c.m. vertical.

ii Impact abrasion present just above medial end of right eyebrow size 1.5 c.m. diameter irregular.

Iii impact abrasion over mid forehead region slightly towards right size 3.0 cm diameter irregular.

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आदेश पत्रक (पूर्वानुबद्ध)

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	iv. Multiple impact abrasion present over right tibial tuberosity and around in an area of 8.0 c.m. size varying from pinhead to 1.5 cm diameter irregular. v. Impact abrasion present just above left Tibial tuberosity size 3 x 0.3 c.m. transverse. vi. Incised wound present on right parietal region, 10.0 c.m. above tip of right mastoid size 5 x 0.5 c.m. obliquely vertical. Slicing medially and flapping laterally scalp deep. vii. Another incised wound 1.0 c.m. medial to injury no. 6 size 2.5 x 0.5 c.m. vertical, scalp deep. viii. Another incised extending from lower end of injury No. 7 obliquely vertical size 3 x 0.5 c.m. scalp deep. ix. Another incised wound present just medial to injury no. 8 extending from its mid obliquely vertical size 4 x 0.5 cm slicing medially, flapping laterally. x. Lacerated wound triangular 10.0 c.m. above left tip of mastoid and 2.0 c.m. posterior on left parietal region size 1.5 c.m. diameter irregular scalp deep.	

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आदेश पत्रक (पूर्वानुबद्ध)

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xi. Lacerated wound 4.0 c.m. below injury no. 10 size 3.5 c.m. diameter irregular, scalp deep. Scalp heavily eclymosed underneath injury scalp showing linear fracture extending from right lambdoid suture at point 5.0 c.m. right lateral to lambda going towards lf. Side in transverse plane crossing the left lambdoid suture than downwards upto left lateral border of forearm magnum size 20.0 c.m.long. Another depressed piece of size between the limbs of lambdoid suture size 6x2.5 cm transverse irregular. Meniages healthy.

8. Conviction of the appellant is based on the statements of P.W. 10 Narsingh, who has seen the incident and also on the statement of P.W. 2 Kamalnarayan Sahu, P.W. 5 Alakhram, P.W. 11 Santu, P.W. 16 Bhukhan and P.W. 21 Gangabai. As per the case of the prosecution, the incident was first witnessed by women folk who saw a quarrel between the accused and Alakhram and fled from the scene of occurrence shouting that some thief is assaulting Alakhram near tank. To establish this, prosecution has relied upon the statement of P.W. 21 Gangabai, who has stated that she along with other ladies of village had gone to pick up cow dung in the field where

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

they saw that one thief holding brick in his hand was coming from front side. The accused present in the Court is the same person whom they had seen in the field. He after seeing them chased them by showing brick, as a result of which they fled towards village shouting thief, thief. At this stage, she was declared hostile. In paragraph 4 of her statement, she has stated that they had not seen the thief in the village before and it is correct to say that they could not recognize the thief. She has further stated that it is true to say that she is witnessing the accused for the first time and she had never seen him before. P.W. 10 Narsingh has stated that on the date of incident, women folk of village were coming from tank side shouting thief, thief, whereupon he along with Bhola went there and on way they met Parmeshwar and Munu. Near the tank Alakhram also met. Alakhram informed that thief has come and he is chasing persons. He further stated that he cannot say with certainty that he was the same person or not because he fled from the scene of occurrence. He had further stated that who has assaulted Konda, he does not recognize. In cross-examination by the prosecution in para 4, he has further stated that the person who was present there was

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आदेश पत्रक (पूर्वानुबद्ध)

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beating Konda. Thus we find that this witness is not a reliable witness as he has taken a somersault in examination-in-chief thereafter in cross-examination by the prosecution and again in cross-examination by the defence and Court below was not justified to place reliance upon the statement of this witness.

9. P.W. 11 Santuram Sahu has stated that the accused was holding club and axe and one stone, he was chasing the persons advancing towards him and was threatening them. Gradually crowed gathered and they surrounded him and he was caught. He further stated that the accused present in the Court is the same person who had done the incident as a thief on the date of incident. In paragraph 6 of cross-examination by the defence, he has stated that it is true to say that on the place of incident, some 100-150 persons were present there, the accused present in the Court was caught. Who assaulted whom he does not know. P.W. 16 Bhukhan has stated that on hearing of the incident he went towards the tank and reached the field where Sheshnarayan informed him that the thief is there at a distance of 2-3 field. When the villagers advanced towards him, he chased them and the accused who is present in Court is the same

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आदेश पत्रक (पूर्वानुबद्ध)

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	person whom he had seen as a thief in village Guma. He has further stated that when the villagers went to apprehend Bhodu, he was accompanying them, however Bhodu chased villagers and thereafter he returned his house. He was declared hostile and subjected to cross-examination by the prosecution and in cross-examination by the prosecution he has stated that it is true to say that on being asked by Topram Sahu and others, Bhodu had stated that he had killed a person by axe, however he does not recognize that person whom he has killed. In cross-examination by the defence, he has stated that when he reached the place of incident, he could see Bhodu at a distance of 2-3 fields, some 150-200 persons had gathered there, they had reached towards him shouting that he is the thief. It is further stated that it is true to say that when the persons reached towards him, he took up an axe lying in the field and started embellishing in his defence and when he was trying to save himself, he caught him from behind and after them Kamal Narayan snatched the axe from him. In para 9, this witness has further stated that the accused did not make confession before Topram Sahu and other that he has killed by an axe.	

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आदेश पत्रक (पूर्वानुबद्ध)

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	10. P.W. 2 Kaman Narayan is brother of the deceased. He has stated that after learning from woman folk about the thief that he is assaulting Alakhram in the field, he went to the place of incident where 40-50 people were gathered, out of them 10-20 persons had surrounded the thief. The accused was holding stone in his one hand and an axe in other and was standing in the field where dead body of Sumant was lying. When he reached near the accused, the accused chased him. Since his brother was dead he was not in senses as to who were the persons present there when the accused was chasing with axe. The crowed present there pelted stones towards accused and one person from village Pataura caught him and thereafter Kamalnarayan caught him by neck. The accused assaulted him by axe as a result of which he sustained injury over his neck and thereafter villagers snatched the axe and they started beating the accused. At that time, police reached on the spot. On his information, Merg intimation of Ex. P-4 was recorded as also Dehati Nalishi of Ex. P-5. In cross-examination, he admitted that he has not seen the incident and he had received only this information that some thief is chasing persons and beating Alakhram.	

मामला क्रमांक Cr. A. No. 668/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11. We have already held that P.W. 10 Narsingh is not a reliable witness and evidence of P.W. 5 Alakhram, P.W. 11 Santuram and P.W. 16 Bhukhan also does not inspire confidence because they have given different version in their statement. If we closely scrutinize the evidence of P.W. 16, we find that when villagers numbering more than 100 rushed towards the accused, he picked up an axe lying in the field and waved the same in his defence. Under what circumstances, the axe was lying in the filed has not been explained by the prosecution. There is no credible evidence available on record regarding participation of the appellant in assaulting the deceased. Considering the fact that there was no motive for the appellant to cause death of the deceased and further considering patchy evidence adduced by the prosecution to establish the charge, in our considered opinion, the Court below ought to have extended benefit of doubt to the appellant. 12. On the basis of above discussion, we are of the considered opinion that the instant appeal preferred by the appellant deserves to be allowed. Accordingly the appeal is allowed. The impugned judgment convicting the appellant under Section 302 of I.P.C. and	

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आदेश पत्रक (पूर्वानुबद्ध)

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sentencing him to undergo imprisonment for life with fine of Rs. 1000/- is set aside and it is directed that the appellant be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.